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ALBERT PEREZ, Appellant)	
)	
and)	Docket No. 04-58
)	Issued: March 16, 2004
U.S. POSTAL SERVICE, POST OFFICE,)	
Dallas, TX, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chairman
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

On October 6, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs September 10, 2003 schedule award decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award.

On September 12, 1986 appellant, then a 32-year-old electronics technician, filed a traumatic injury claim alleging that on September 6, 1986 he sustained injury to his right leg and back while carrying a parcel. Appellant stopped work.¹ The Office accepted appellant's claim for a herniated nucleus pulposus at L4-5, displacement of the lumbar intervertebral disc without

¹ It appears that he stopped work on the date of the injury.

myelopathy and authorized a repeat laminectomy and discectomy. Appellant received appropriate benefits and the Office continued to develop his claim.

In an August 28, 2002 report, Dr. Richard R. Jones, Board-certified in physical medicine and rehabilitation, indicated that appellant sustained an injury back in 1986 and last worked on August 28, 2002. He noted that appellant was on modified duty. The physician determined that appellant had twice undergone lumbar spine surgery and had chronic lumbar radiculopathy. A September 11, 2002 magnetic resonance imaging scan read by Dr. Richard B. Schwartz, a Board-certified diagnostic radiologist, revealed postoperative changes at L4-5 with mild to moderate central stenosis and mild left-sided foraminal stenosis, with central stenosis at L5-S1. In a report dated September 25, 2002, Dr. Jones indicated that appellant required continued work restrictions.² Dr. Jones provided additional restrictions in a January 17, 2003 duty status report, however, the physician did not provide any rating of permanent impairment.

In a March 14, 2003 report, Dr. Anh Q. Nguyen, Board-certified in physical medicine and rehabilitation, noted appellant's history of injury and treatment. Dr. Nguyen indicated that appellant had no tenderness with palpation along the lumbar spine or right hip and no muscle spasm was noted. She determined that appellant had a negative Faber's test, a steady gait and that he ambulated without assistive devices. Regarding muscle strength, the physician noted that appellant had motor strength in the right lower extremity of hip flexion 4/5, knee extension/knee flexion 4/5, ankle dorsiflexion 4/5; extensor hallucis longus 4/5 and motor strength in the left lower extremity of 5/5 throughout. She conducted a straight leg raising test, which was negative, with straight leg raising range of motion of 60 degrees on the right and left. Dr. Nguyen noted appellant's deep tendon reflexes were 1+ in the right ankle and 0 in the right knee and no clonus was noted. She found a sensory examination of decreased light touch and pinprick on the lateral aspect of the right thigh and the right calf. Dr. Nguyen determined that appellant was status-post L4-5 laminectomy with central spinal and foraminal stenosis and had reached maximum medical improvement on March 14, 2003. She opined that under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (hereinafter A.M.A., *Guides*),³ appellant was entitled to an impairment rating of 13 percent of the whole person pursuant to Table 15-3.⁴

On April 29, 2003 appellant filed a claim for a schedule award. By letter dated May 19, 2003, the Office requested an impairment rating from Dr. Nguyen. The Office advised Dr. Nguyen that the lower extremity impairment evaluation worksheet should be used as a schedule award was not appropriate for impairment of the spine. By letter dated June 25, 2003, the Office referred appellant to Dr. John Sklar, Board-certified in physical medicine and rehabilitation, for a second opinion examination.

² He provided those restrictions in a duty status form report of the same date.

³ The fifth edition of the A.M.A., *Guides* became effective February 1, 2001. FECA Bulletin No. 01-05 (issued January 29, 2001) provides that any initial schedule award decision issued on or after February 1, 2001 will be based on the fifth edition of the A.M.A., *Guides*, even if the amount of the award was calculated prior to that date.

⁴ A.M.A., *Guides*, Table 15-3 at 384.

In an August 1, 2003 report, Dr. Sklar utilized the fifth edition of the A.M.A., *Guides* and noted appellant's history of injury and treatment, including two back surgeries in 1987 and 1989. He indicated that appellant reached maximum medical improvement by January 1, 1991. Dr. Sklar found that there was no atrophy in the right lower extremity and good strength throughout the bilateral lower extremities. He advised that sensory testing showed decreased sensation to pinprick in the right lateral thigh, medial calf and medial and lateral foot with a nonneuroanatomical distribution. The physician indicated that the deep tendon reflexes were absent at the left ankle but intact on the right, with palpatory examination showing moderate tenderness to palpation in the right lumbar paraspinals, gluteals and lateral thigh. The lumbar range of motion was decreased in all planes secondary to pain and muscular tightness. He stated that the examination was consistent with the diagnosis of a myofascial pain syndrome of the right lumbar paraspinals, gluteals and lower extremity. Dr. Sklar noted that the Office's guidelines did not recognize spinal impairment and that any impairment must be based on impairment of the right lower extremity. The physician determined that there was no evidence of ratable motor or sensory dysfunction and that the impairment rating should be based upon appellant's complaint of pain. Dr. Sklar opined that appellant had moderate pain in the right lower extremity, yielding a two percent lower extremity impairment.

On August 28, 2003 an Office medical adviser reviewed Dr. Sklar's August 1, 2003 report and noted an absence of motor deficits in the lower extremities and sensory changes in the right lower extremity in a nonneuroanatomical distribution. Utilizing the fifth edition of the A.M.A., *Guides*, he determined that section 18.3d allowed a 2 percent impairment for pain.⁵

By decision dated September 10, 2003, the Office granted appellant a schedule award for a 2 percent permanent impairment of the right lower extremity for a total of 5.76 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁶ and its implementing regulation⁷ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of specified members or functions of the body. However, the Act does not specify the manner, in which the percentage loss shall be determined. For consistent results and to ensure equal justice under the law to all appellants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all appellants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁸ Neither the

⁵ A.M.A., *Guides*, section 18.3d at 573.

⁶ 5 U.S.C. §§ 8101-8193, 8107.

⁷ 20 C.F.R. § 10.404.

⁸ FECA Bulletin No. 01-05 (issued January 29, 2001); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

Act nor its implementing federal regulations provides for a schedule award for impairment to the back or to the body as a whole. Furthermore, the back is specifically excluded from the definition of “organ” under the Act.⁹

ANALYSIS

The Office based appellant’s schedule award on the opinions of Dr. Sklar and the Office medical adviser. In a report dated March 14, 2003, Dr. Nguyen indicated that appellant had attained maximum medical improvement on March 14, 2003 and that, under to the A.M.A., *Guides*, his two lumbar surgeries entitled her to a 13 percent impairment of the “body as a whole.” The physician, however, failed to submit a separate impairment rating for appellant’s right lower extremity, despite receiving a letter from the Office requesting such. The Act does not provide for a schedule award for whole body impairment or for the back.¹⁰ The Office properly referred the case to Dr. Sklar for an impairment evaluation. Dr. Sklar found that appellant had a two percent impairment of the right lower extremity and explained his findings under the A.M.A., *Guides*. He noted that there was no evidence of ratable motor or sensory dysfunction and that the impairment rating should be based on appellant’s pain. Which yielded a two percent impairment of the right lower extremity. In an August 28, 2003 report, the Office medical adviser reviewed Dr. Sklar’s report and agreed that appellant had a two percent impairment of his right lower extremity based on pain.

The Board finds that the Office medical adviser provided a reasoned opinion as to the degree of permanent impairment under the fifth edition of the A.M.A., *Guides*, which establishes that appellant has no greater impairment of the right lower extremity. Appellant has not provided any medical reports, based on objective findings, which establish that he has more than a two percent permanent impairment of the right lower extremity, for which he received a schedule award.

On appeal, appellant contends alleged that there is a discrepancy between his physician and the Office physician and that he is entitled to a greater schedule award. The Board notes that appellant is not entitled to any schedule award based on impairment pertaining solely to his back or whole person.

CONCLUSION

The Board finds that appellant has not established that he sustained more than a two percent permanent impairment of the right lower extremity.

⁹ Jay K. Tomokiyo, 51 ECAB 361 (2000); Terry E. Mills, 47 ECAB 309 (1996).

¹⁰ 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404; Jay K. Tomokiyo, *supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 10, 2003 is affirmed.

Issued: March 16, 2004
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member